

# WASHINGTON STATE GAMBLING COMMISSION

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## COMMISSION MEETING TUESDAY, NOVEMBER 30, 1999 MINUTES

**Chairperson Ludwig** called the meeting to order at 1:30 p.m., at Port Ludlow Conference Center. Chair Ludwig introduced the members of the Commission and staff present.

**MEMBERS PRESENT:** CURTIS LUDWIG, Chairperson;  
COMMISSIONER LIZ McLaughlin,  
COMMISSIONER PATRICIA HERBOLD, and  
Ex Officio Members SENATOR MARGARITA PRENTICE

**OTHERS PRESENT:** BEN BISHOP, Executive Director;  
SHERRI WINSLOW, Deputy Director of Operations;  
ED FLEISHER, Deputy Director of Policy & Governmental Affairs;  
CALLY CASS-HEALY, Assistant Director, Field Operations;  
DERRY FRIES, Assistant Director, Licensing Operations;  
ROBERT BERG, Assistant Director, Special Operations  
AMY PATJENS, Manager, Communications and Legal Department;  
MONTY HARMON, Program Manager  
JERRY ACKERMAN, Assistant Attorney General; and  
SHIRLEY CORBETT, Executive Assistant

**Chairperson Ludwig** introduced Jerry Ackerman, Assistant Attorney General, filling in at this meeting for Jon McCoy.

### 1. LICENSE APPROVALS

**New Licenses, Changes, and Tribal Certifications:** Chair Ludwig said

Commissioner McLaughlin made a motion seconded by Commissioner Herbold to approve the new licenses, changes, and tribal certifications as listed in pages 1-36 the agenda packet. Vote taken; the motion carried with four aye votes.

### 2. REVIEW OF WEDNESDAY'S AGENDA

**Amy Patjens**, Manager, Communications and Legal Department briefly highlighted Wednesday's agenda items: a staff report relating to the card room enhancement test program, three default orders, and noted that staff would be asking for a vote to extend pilot program through May 1, 2000. Several rules are up for final action: promotional contests of chance, three rules relating to the age limits to participation gambling activities, three rules dealing with gambling service suppliers, and fourteen rules to streamline the Bingo rules. A short presentation by the Spokane Tribe has been scheduled, followed by three appeals (Doran's Dead Game Service, Inc., Groovy's and The Spot Tavern).

**Chair Ludwig** announced there would be an executive session at the end of regular business this afternoon and noted an executive session was not anticipated for Wednesday.

### 3. INCREASE IN LICENSING FEES

**WAC 230-04-202, WAC 230-04-203, WAC 230-04-204, WAC 230-04-133  
Repeal WAC 230-04-206, Repeal WAC 230-04-198**

**Amy Patjens** explained that staff was trying to put all the rules related with fees in one rule. Ms. Patjens noted that a fee increase was necessary, and the proposed rates were within I-601 allowances. WAC 230-04-198 pertaining to reductions of license fees and WAC 230-04-206 relating to fees – linked bingo prize providers and linked bingo prize provider representatives, were repealed. **Chair Ludwig** reminded the audience that in the past, the Commission has delayed implementing increases and assured the licensees that staff is doing everything to keep costs down. Ms. Patjens noted the rules would become effective 31 days from filing, and noted that all renewals would go out with the correct license fee amount. Staff recommended final action

**Chair Ludwig** noted that in relation to agenda item 3-A through 3- F, there were no statements of opposition. Chair Ludwig asked for questions or comments from Commissioners, and there were none. Chair Ludwig open the issue for public comments, and received no comments.

**Commissioner Herbold** made a motion seconded by **Commissioner McLaughlin** to approve agenda items 3A-3F to be effective 31 days after filing. *Vote taken; the motion carried with three aye votes.*

**4. GROUP IV - QUALIFICATION REVIEWS:  
Loyal Order of Moose #1774, Vancouver:**

**Monty Harmon**, Program Manager, highlighted the review activities and the programs provided by the organization. The organization met its required combined net return percentage, made progress toward accomplishing their stated purpose, and as of October 22, 1999, there were no pending administrative charges against the organization. Based on the review, staff recommends the Loyal Order of Moose #1774 be approved as a fraternal organization and authorized to conduct gambling activities in the state of Washington. Representatives from the organization were not present.

**Chair Ludwig** noted this organization is doing pretty good, given their location. **Mr. Harmon** affirmed the Vancouver area has done well. Commissioner Ludwig opened the issue for public comments. There were none.

**Commissioner Herbold** made a motion seconded by **Commissioner McLaughlin** to approve the Loyal Order of Moose #1774 located in Vancouver as a fraternal organization, and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion carried with three aye votes.*

**Boys and Girls Clubs of Pierce County, Tacoma:**

**Monty Harmon**, highlighted the review activities and the services and programs the Boys and Girls Club provides. Mr. Harmon affirmed the organization has met their requirements, and noted that as of October 25, 1999, there were no pending charges against this organization. Based on the review, staff recommends the Boys and Girls Clubs of Pierce County be approved as a charitable organization and authorized to conduct gambling activities in the state of Washington.

**Commissioner Herbold** questioned why this organization was doing even better than last year, even when compared to other nonprofits. **Mr. Harmon** advised that it may be due to a closure from another hall in the area. **Commissioner Ludwig** called for public comments, there were none.

**Commissioner McLaughlin** made a motion seconded by **Commissioner Herbold** to approve the Boys and Girls Clubs of Pierce County as a charitable organization, and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion carried with three aye votes.*

**Columbia Basin Domestic Violence Services, Kennewick:**

**Monty Harmon**, highlighted the review activities and the services provided by the Columbia Basin Domestic Violence Services. The organization met their net return requirement and there are no pending charges. The organization is also making progress toward accomplishing their stated purpose. Staff recommends the Columbia Basin Domestic Violence Services be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington. No representatives were present.

**Chair Ludwig** opened the issue for public comments and there were none.

**Commissioner Herbold** made a motion seconded by **Commissioner McLaughlin** to approve the Columbia Basin Domestic Violence Services located in Kennewick as a charitable organization, and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion carried with three aye votes.*

**5. GROUP V QUALIFICATION REVIEW**

**Northern Lights Drum & Bugle Corps, Longview:**

**Monty Harmon**, clarified this organization was initially licensed as a Class L operation. However, during the year, they exceeded that limit and were upgraded to a Class M and were required to meet the higher return. Mr. Harmon highlighted the review process and provided an overview of the services this organization provides. There were no pending administrative charges, and the organization has made progress toward accomplishing their stated purpose. Staff recommends Northern Lights Drum & Bugle Corps Association located in Longview be approved as an educational organization and authorized to conduct gambling activities in the state of Washington.

**Sherry Evold**, Manager, was present and reported that she replaced Randy Baierl. **Chair Ludwig** opened the item for public comments, there were none.

**Commissioner McLaughlin** made a motion seconded by **Commissioner Herbold** to approve the Northern Lights Drum & Bugle Corps located in Longview as an educational organization, and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion carried with three aye votes.*

**6. CARD ROOM CONTRACT UNDER APPENDIX B – GENERAL ENHANCEMENT PILOT PROGRAM:**

**Cally Cass-Healy**, Assistant Director, Field Operations, explained that Olivia's Poker Hall in Bellingham, and the Great Wall Casino in Tacoma withdrew their requests for consideration this month.

**E & J Reyes, Bremerton:**

**Cally Cass-Healy** provided background information on E & J's, which is a restaurant/lounge/card room that has been in operation since 1986. Ms. Cass-Healy reviewed E & J's request to increase their number of tables from 6 to 15; to allow an alternative collection of card room fees; and to run player-supported progressive blackjack schemes. Ms. Cass-Healy reported that staff recommended approval.

**Chair Ludwig** noted the establishment already has a license, so this is not new, they are just asking for more tables and for player-supported progressive blackjack. Chair Ludwig asked for public comment, there was none.

**Commissioner Herbold** made a motion seconded by **Commissioner McLaughlin** authorizing execution by E & J Reyes of Bremerton for Appendix B activities. *Vote taken; the motion carried with three aye votes.*

**7. CARD ROOM CONTRACT UNDER APPENDIX C – HOUSE BANKED PILOT PROGRAM:**

**Luciano's, Tacoma**

**Cally Cass-Healy** reported this establishment is a commercial restaurant and card room operation. The business has requested a six month waiver and is requesting approval for 13 house banked tables. Commission agents have reviewed their internal controls which appear to be functional and in compliance. Presently, the business does not have all their employees nor their cards. They plan to open on December 15th, and staff will verify they are in compliance with all regulations prior to opening date. Ms. Cass-Healy noted that staff is recommending approval for Phase II operations.

**Commissioner McLaughlin** clarified the business has a license but hasn't used it, and is now asking for a waiver based on the experience of the shift manager. **Chair Ludwig** questioned where they managers obtained their experience. **Ms. Cass-Healy** responded that Mr. Ohannesen worked in Las Vegas for 8 years and Mr. Snider has 2.5 years experience with Washington tribal casinos.

**Commissioner McLaughlin** addressed the letters in the commission packet asking the Commission not to grant the enhanced card room status for Luciano's due to the Shoreline Management Act (SMA) and other reasons. Commissioner McLaughlin asked for verification that the Commission can not take the location of an operation into consideration when reviewing applications. **Amy Patjens**, Manager, Communications and Legal Department, affirmed, and noted that licensees are required to comply with all local and state ordinances/laws. **Ed Fleshier**, Deputy Director, acknowledged there are issues regarding the SMA permit. However, the approval of the SMA permit process is facilitated through the City of Tacoma and the Department of Ecology. If Luciano's were to operate without valid permits, that would be a violation of the Gambling Commission's regulations. Commissioner McLaughlin asked for an opinion from the Assistant Attorney General. **Mr. Ackerman** affirmed the operation is currently lawfully allowed to operate, and noted that it is not the job of the Commission to interpret nor apply conditions based on the Shoreline Management Act. He affirmed that if the establishment operates without the appropriate SMA permits, the Department of Ecology (DOE) has the authority to proceed with enforcement action. If there are SMA issues in litigation, the business, the City and DOE will proceed through that parallel process. If it is confirmed that Luciano's is in violation of the SMA, this commission has the authority to suspend their gambling license.

**Chair Ludwig** inquired if there was a representative from Luciano's present. **Dan Hilger** responded. Chair Ludwig asked Mr. Hilger if he was aware of the correspondence regarding the SMA issue, and if he was aware he had to comply with all the permits required. Mr. Hilger affirmed. Chair Ludwig inquired if there was anyone in the audience that would like to speak in support or opposition of this request. None were expressed.

**Mr. Hilger** noted his neighborhood became hostile from the beginning because people have an image of what the facility is -- and it is not an accurate image. Mr. Hilger reported that he has followed every rule and gotten every permit. **Senator Prentice** urged Mr. Hilger to meet with the community group and extend an invitation visit the facility. She also noted his greatest ally may be the local police department, because they have criminal activity statistics and can attest to whether or not card rooms have increased criminal activity in the area. **Mr. Hilger** advised that he would be happy to speak to anyone and that he wanted to be a good neighbor. **Chair Ludwig** suggested that after he invited the neighborhood to visit his card room, they visit the Emerald Queen so they can see the difference between a casino and a card room.

**Commissioner Herbold** made a motion seconded by **Commissioner McLaughlin** to approve Luciano's to Level II, Phase I of the card room pilot study program subject to a subsequent inspection to verify employees, playing cards and signature cards are in compliance with Commission regulations. Vote taken: the motion carried with three ayes.

**Chair Ludwig** called for a recess at 2:40 p.m., and called the public meeting back to order at 3:00 p.m.

8. **PHASE II REVIEWS:**

**All Star Lanes, Silverdale**

**Cally Cass-Healy** provided historical and ownership background information on the All Star Lanes and Restaurant located in Silverdale. Commission agents conducted a comprehensive review of the operations, there were no problems with law enforcement inquiries, and no current violations. Staff recommends approval for Level II, Phase II status for this facility.

**Jeff Coombe** was present and reported that he is happy with the way things are proceeding. **Chair Ludwig** open the issue for public comments. No comments were offered.

**Commissioner Herbold** made a motion seconded by **Commissioner McLaughlin** to approve All Star Lanes and Restaurant for Level II, Phase II status. *Vote taken: the motion carried with three ayes.*

**Jack Niemann's, Bellingham:**

**Cally Cass-Healy** provided historical and ownership background information on Jack Neimann's Steakhouse located in Bellingham. Commission agents conducted a comprehensive review of the operations and noted three violations, which were corrected. Based on the review, staff recommends approval to Level II, Phase II status for Jack Niemann's.

**Jack Niemann** was present and affirmed his establishment is also a great place to eat. **Chair Ludwig** noted the three violations had been corrected and affirmed the process was educational. He opened the issue for public comments. No comments were offered.

**Commissioner McLaughlin** made a motion seconded by **Commissioner Herbold** to approve Jack Niemann's Steakhouse for Level II, Phase II status. *Vote taken: the motion carried with three ayes.*

**Jimmy G's, Lakewood:**

**Cally Cass-Healy** provided historical and ownership background information on Jack Neimann's Steakhouse located in Bellingham. Commission agents conducted a comprehensive review of the operations and based on the review, staff recommends approval to Level II, Phase II status for Jimmy G's.

**Commissioner McLaughlin** inquired if Christopher Kealy was a principal owner. **Ms. Cass-Healy** affirmed and noted that Bob Barnes was present. **Chair Ludwig** noted that six violations were found and corrected. Mr. Barnes affirmed. Chair Ludwig asked Mr. Barnes what he thought about the review process. **Mr. Barnes** replied that he thought the Commission staff were great to work with and noted the review really helped his operation. Chair Ludwig open this issue for public comment. No comments were offered.

**Commissioner Herbold** made motion seconded by **Commissioner McLaughlin** to approve Jimmy G's Casino/Restaurant for Level II, Phase II status. *Vote taken: the motion carried with three ayes.*

**Freddies Casino, Everett:**

**Cally Cass-Healy** provided historical and ownership background information on Freddies Club located in Everett. A review of the gaming operation was conducted, and based upon the review, staff recommends approval to Level II, Phase II status for Freddies.

**Commissioner Herbold** addressed the seven violations, and thought it was unusual for that many to surface after being through a Phase I review. **Ms. Cass-Healy** affirmed that staff didn't expect as many operational violations. However, she noted the staff from Freddie's were very helpful. **Chair Ludwig** addressed the issue of failing to maintain adequate funds to cover the aggregate prize amount. **Ms. Cass-Healy** advised that it was taken care of immediately, and noted that Fred Steiner was present to answer any questions.

**Commissioner McLaughlin** commented and **Chair Ludwig** concurred that Freddie's is a beautiful card room facility. Chair Ludwig asked for public comments and none were submitted.

**Commissioner McLaughlin** made motion seconded by **Commissioner Herbold** to approve Freddie's Casino for Level II, Phase II status. *Vote taken; the motion carried with three ayes.*

**Chip's Casino, Bremerton:**

**Cally Cass-Healy** provided historical and ownership background information on Chip's Casino and Deli, located in Bremerton. Agents conducted a review of their operations and based on the review, staff recommended approval for Phase II, Level II status for Chip's Casino.

**Commissioner Herbold** commented about the eleven violations. **Ms. Cass-Healy** reported that all the violations were corrected and that Chip's staff was very helpful. Commissioner Herbold inquired if operators repeat their violations. Ms. Cass-Healy advised that for the most part, they do not. Mike Troilo, General Manager and Al Larson, Casino Manager were present to answer questions.

**Mr. Troilo** reported that with the \$100 limits, his facility is now operating in the profit mode. Additionally, being able to offer the \$100 limit attracts a different clientele as well as new players. **Chair Ludwig** opened the issue for public comments. **Commissioner McLaughlin** inquired if the deli is a full service restaurant, and received an affirmative response. No other comments were offered.

**Commissioner Herbold** made motion seconded by **Commissioner McLaughlin** to approve Chip's Casino for Level II, Phase II status. *Vote taken; the motion carried with three ayes.*

**Pete's Flying Aces, Tukwila:**

**Cally Cass-Healy** provided historical and ownership background information on Pete's Flying Aces located in Tukwila. Agents conducted a review of their operations and based on the review, staff recommended approval for Phase II, Level II status for Pete's Flying Aces. Ms. Cass-Healy noted that Charlie Fearing and Randy Russell were present to answer any questions.

**Chair Ludwig** noted that all violations had been corrected. **Mr. Fearing** commented that the \$100 limits have increased playing at the facility. **Commissioner Herbold** verified that if approval is granted, this facility would allow \$100 limits on all 15 tables. Mr. Fearing affirmed.

**Chair Ludwig** called for public comments and none were provided. **Senator Prentice** noted this facility is located within her district, and expressed her desire to see them succeed. She reported that it is a very attractive facility with a sports bar and a nice restaurant that is obviously the place to go to when in Tukwila. **Chair Ludwig** extended the Commission's gratitude for the strides this facility has taken to improve the image of card rooms.

**Commissioner McLaughlin** made a motion seconded by **Commissioner Herbold** to approve Pete's Flying Aces for Level II, Phase II status. *Vote taken; the motion carried with three ayes.*

**Golden Nugget, Tukwila:**

**Cally Cass Healy** provided historical and ownership background information on the Golden Nugget located in Tukwila. Commission staff conducted a review of their operations and based on the review, staff recommended approval for Phase II, Level II status for the Golden Nugget Casino. Keith Vormsberg was present to answer questions.

**Chair Ludwig** inquired how business was doing and how many house banked card rooms were in Tukwila. **Mr. Vormsberg** replied that business is doing a lot better. He reported that currently there are five card rooms in the Tukwila area, and all appear to be doing very well. **Senator Prentice** noted that the Tukwila Police Department had been contacted and have assured these types of operations have caused no increases in crime in the Tukwila area. **Chair Ludwig** called for public comments. There were none.

**Commissioner Herbold** made a motion seconded **Commissioner McLaughlin** to approve the Golden Nugget for Level II, Phase II status. *Vote taken; the motion carried with three ayes.*

**9. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC**

**Chuck Russell**, owner of the Valley Tavern in Port Hadlock, addressed Bacon Bingo. He reported that this activity has been a good experience in his locale, and that he hasn't had any problems. He conducts the function on Sunday evenings (one game on the hour, for three games; each game lasting ten minutes) and affirmed that it has enhanced his business. Mr. Russell advised that he generally purchases his prizes at Costco. He emphasized that Bacon Bingo didn't need regulation because it doesn't make much money, and can be operated very informally. Mr. Russell also noted that the Gambling Commission's rules and regulations can be very intimidating to new licensees. No other public comments were offered.

**10. EXECUTIVE SESSION TO DISCUSS PENDING INVESTIGATIONS AND LITIGATION**

**Chair Ludwig** recessed the regular meeting at 3:50 p.m. to conduct an executive session. No other business will be conducted other than to adjourn at the conclusion of the executive session. Chair Ludwig adjourned the meeting at 4:30 p.m.

**WASHINGTON STATE GAMBLING COMMISSION**

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**COMMISSION MEETING  
WEDNESDAY, DECEMBER 1, 1999  
MINUTES**

**Chairperson Ludwig** called the meeting to order at 9:30 a.m., at the Port Ludlow Conference Center.

**MEMBERS PRESENT:**                      **CHAIR CURTIS LUDWIG, Chairperson;  
COMMISSIONER LIZ McLAUGHLIN,  
COMMISSIONER PATRICIA HERBOLD, and  
Ex Officio Member SENATOR SHIRLEY WINSLEY**

**OTHERS PRESENT:**                      **BEN BISHOP, Executive Director;  
SHERRI WINSLOW, Deputy Director of Operations;  
ED FLEISHER, Deputy Director of Policy & Governmental Affairs;  
CALLY CASS-HEALY, Assistant Director, Field Operations;  
DERRY FRIES, Assistant Director, Licensing Operations;  
ROBERT BERG, Assistant Director, Special Operations;  
AMY PATJENS, Manager, Communications and Legal Department;  
JERRY ACKERMAN, Assistant Attorney General;  
MELINDA FROUD, Tribal Coordinator and Staff Attorney; and  
SHIRLEY CORBETT, Executive Assistant**

**Chairperson Ludwig** announced that Commissioner Marshall would not be attending today's meeting due to some travel difficulties. Chair Ludwig reintroduced Assistant Attorney General, Jerry Ackerman, sitting in for Jon McCoy.

**1.      APPROVAL OF THE MINUTES – OCTOBER 14 & 15, 1999, MEETINGS:**

**Commissioner Herbold** made a motion seconded by **Commissioner McLaughlin** to approve the minutes of the October 14 & 15, 1999, meeting as presented. *Vote taken; motion carried with three aye votes.*

**2.      STAFF REPORT:**

**Card Room Enhancement Test Program**

**Cally Cass-Healy** provided an update on events since the card room pilot study was extended in May of 1999. Currently, there are eight card rooms participating in the general enhancement test (Appendix B) and 52 licensees participating in the house banked test (Appendix C). Of the 52 card rooms, 23 are operating under Appendix C at the Phase I limits (\$25 maximum wager) and 29 are operating at the Phase II limits (\$100 maximum wager). The gross receipts for all enhanced card room activity exceeded \$14 million dollars for the month of October alone.



When the test was extended, the Governor requested that the Commission slow down the approval of house banked card rooms. Only one Phase I card room has been approved per month since May of 1999. In order to accommodate licensees who had met the requirements to request Phase II status, two teams were formed and they have completed ten Phase II reviews in the last two months.

It is anticipated that by March, all Phase I licensees who are on the list, licensed and have requested to move forward will be completed. Additionally, all the Phase II reviews for licensees who have met the six month requirements and have requested to move forward should be complete.

The Commission also implemented a comprehensive monitoring program. It includes a schedule to conduct compliance inspections with a minimum of two visits per month per licensee. Unfortunately, due to staff turnover, the unanticipated increase in investigation time related to CREP activities, and because of the amount of personnel concentrating solely on Phase II reviews, the agency is having some trouble meeting the monitoring goals. However, the agency should be fully staffed and caught up with the Phase II reviews by the end of the test period, and anticipates the ability to fully meet the monitoring goals.

A comprehensive overview will be provided at the January Commission meeting, in conjunction with the proposed permanent card room rules. The report will contain information gathered during the test period in order for the Commission to make decisions regarding the scope, activities and regulation of enhanced and house banked card rooms in the future. If the rules are filed in January as scheduled, and final action taken in March, they will become effective on May 1, 2000.

**Commissioner Herbold** asked for the total amount of card rooms that would be in existence at the end of the test program. **Ms. Cass-Healy** replied, 64 or 65. **Chair Ludwig** expressed appreciation for the report.

### **3. DEFAULT ORDERS – DENIAL OF APPLICATION FOR A CARD ROOM EMPLOYEE'S LICENSE:**

**Rodney Greiner, Pasco:**

**Melinda Froud**, Staff Attorney provided a brief summary and noted that as part of the background investigation, staff learned that Mr. Greiner had a criminal history which included a felony and several moving vehicle violations that occurred during the last few years. Based upon Mr. Greiner's criminal history, the Director issued administrative charges against Mr. Greiner for denial of his license application. Mr. Greiner failed to submit a request for hearing within the prescribed time, thus waiving his right to a hearing. Staff recommends the Commission deny Rodney M. Greiner's application for a Card Room Employee's License.

**Commissioner McLaughlin** made motion seconded by **Commissioner Herbold** to approve the default order. *Vote taken; motion carried with three aye votes.*

**Jean Butler, Everett:**

**Melinda Froud**, Staff Attorney, provided a brief summary and noted that as a part of the background investigation, staff discovered that Ms. Butler had a criminal history which included a felony and a probation violation stemming from a felony in 1994. Based upon Ms. Butler's criminal history, the Director issued administrative charges against Ms. Butler for denial of her license application. Ms. Butler failed to submit a request for a hearing within the time prescribed, thus waiving her right to a hearing. Staff recommends the Commission deny Jean T. Butler's application for a Card Room Employee's License.

**Commissioner Herbold** made motion seconded by **Commissioner McLaughlin** to concur in denial of the application and to approve the default order. *Vote taken; motion carried with three aye votes.*

### **4. DEFAULT ORDER – REVOCATION OF CARD ROOM EMPLOYEE'S LICENSE:**

**Sherry Stanger, Snohomish:**

**Melinda Froud**, Staff Attorney, provided a brief summary and noted that as a part of an undercover investigation that occurred in the Spring of 1999, Commission agents observed Ms. Stanger participating in illegal Blackjack games at the Spot Tavern, where she was licensed to work. Agents determined that in her capacity as a dealer, Ms. Stanger conducted Blackjack games where she and other individuals provided the funds to "bank" the games, in violation of Commission rules and regulations. As a result of the investigation, the Director issued administrative charges against Ms. Stanger for revocation of her Card Room Employee License. Ms. Stanger failed to submit a request for hearing within the prescribed time, thus waiving her right to a hearing. Staff recommends the Commission revoke Sherry Stanger's Card Room Employee License.

**Commissioner McLaughlin** noted that a decision had not been made regarding games in the Spot Tavern being illegal, and expressed concern about revoking an employee's license. **Commissioner Herbold** stated the case stands alone and that she would make a distinction between a person dealing and an establishment conducting games, which is a different license. **Chair Ludwig** affirmed the employee is in default and believed the Commission could defer action until after the Spot Tavern decision is made. Commissioner McLaughlin requested legal advice whether the Commission can accept the findings regarding Ms. Stanger.

**Mr. Ackerman**, Assistant Attorney General, concurred with the proceedings and affirmed there are two separate proceedings. He noted the matter is uncontested and that the Commission is entitled to conclude matters. **Commissioner McLaughlin** stated that this didn't feel right and asked if the decision could be deferred until after the hearing on the Spot Tavern. The members concurred.

**5. VOTE BY COMMISSION TO EXTEND CARD ROOM ENHANCEMENT TEST PROGRAM:**

**Amy Patjens**, Manager, Communications and Legal Department, explained that per previous action, the Commission extended the card room enhancement test program until March 15, 2000. Ms. Patjens noted that staff would like to formally extend the test program until May 1, 2000. The rules will appear on the agenda for three months, with final action scheduled to occur in March. The rules would become effective 31 days after they are filed, which fits perfectly with the May 1, 2000 extension date.

**Chair Ludwig** noted that everyone is anxious to conclude the pilot program, and asked for public comments. None were offered.

**Commissioner Herbold** made a motion seconded by **Commissioner McLaughlin** to extend the card room enhancement test program until May 1, 2000. *Vote taken; motion carried with three aye votes.*

**6. RULES UP FOR FINAL ACTION:**

**Promotional Contests of Chance: (WAC 230-46-020) (WAC 230-46-035) (WAC 230-46-045) (WAC 230-20-192)**

**Amy Patjens**, Manager, Communications and Legal Department, reported that the Commission had received a letter requesting that with the exception of no fee Bingo (Section B and C), the Commission delay the matters of the rules until after the legislature meets. She noted these rules have been discussed for four months. She affirmed that staff supports holding the rules over to give the legislature an opportunity to review the statute.

Ms. Patjens explained there are two versions of 6C: staff's rules to allow no fee Bingo with restrictions, and Mr. DeCou's version. The main difference is that DeCou's version allows no fee Bingo two times a week for three hours, whereas, staff's recommendation allows 30 minutes a day for seven days a week. Prizes are limited to merchandise value not to exceed \$20. Mr. DeCou's recommendation is \$100 per week, and that businesses be required to record the winner and prizes.

**Senator Winsley** questioned why the name needed to be recorded and if it would remain confidential, and where the Privacy Act enters in. Ms. Patjens advised the names would be kept at the business for verification the prize was awarded. She affirmed the requirements are the same as for bingo and pull-tabs. However, if the Commission were to take the records, they would become a public record and would require a public disclosure request for the release of the names. **Director Bishop** affirmed the requirement by statute for a record of winners to be kept. He affirmed that staff did not recommend keeping the name records, this is Mr. DeCou's recommendation, and that staff would be open to striking that part of the rule.

Chair Ludwig opened the issue for public comment.

**Steve Decou** explained that recording the first name and the prize won validates who won what prize, and how many prizes were won — it is just a tool. The three hours is flexible enough to allow full or partial sessions. **Chair Ludwig** expressed his preference to drop the name issue because prize receipts could be used to verify awards. No further comments were offered, Chair Ludwig asked for public comment regarding delaying action until after the legislative session.

Discussion was initiated regarding the legislation proposed by Julie Porter and whether, thereafter promotional games of contest would not fall under the purview of the Gambling Commission. It was determined that any new law would probably be more general, and would continue to be under the authority of the Gambling Commission. It was noted that the charities and the non profits generally support the proposed legislation as written.

**John Beadle** stated that the WCCGA's position has not changed — they would like some type of rule, and that they support Steve Decou's request.

**Chairman Ludwig** affirmed there are a lot of suggestions in the proposals received. One is that the Commission add in "other than charitable and non profit Bingo activities" where it says "gambling." **Commissioner McLaughlin** pointed out they could table that portion for now. **Commissioner Herbold** agreed. Chairman Ludwig asked if the Commission wanted to defer action on the proposed rules pertaining to No Fee Bingo.

**Commissioner McLaughlin** made a motion to defer taking action on WAC 230-46-020 on new section 230-46-035 and approving the new section 230-46-045.

**Commissioner Herbold** asked if they could decide on A and B because the Commission may want to talk about some changes. **Commissioner McLaughlin** agreed and said they should just end it with deferring action on A and B. **Chairman Ludwig** asked about D. **Commissioner McLaughlin** pointed out that it goes with C.

**Commissioner Herbold** seconded the motion to defer action on A and B. **Chairman Ludwig** called for further questions, discussion or comments. There were none and he called for a vote regarding the motion to defer action on rules listed in 6A and 6B. *Vote taken; motion passed with three aye votes.*

**Chairman Ludwig** addressed the rule on No Fee Bingo and Item 6D asking if there were any proposals to amend WAC 230-46-045 which is listed in 6C, keeping in mind Senator Winsley's comments and concerns. **Commissioner McLaughlin** commented that if the Commission was going to make rules, they must be able to enforce those rules — and if a player is willing to play Bingo and win a prize, she didn't see what was so important about an organization tracking the winner by taking a name.

**Director Bishop** believed that as long as the Commission didn't have the names, there couldn't be a responsibility for the Commission to make them public. **Chairman Ludwig** noted the Director may have the names if a complaint had been filed. Director Bishop affirmed, but didn't believe the public disclosure issue was as critical as the issue of a regulatory requirement to maintain records in order to be

able to enforce the established limits. Chairman Ludwig called for other public comments and asked Mr. Chiecchi if the Licensed Beverage Association position remained the same.

**Senator Winsley** asked why the Commission would want to adopt this before the Legislature takes action and noted the Legislature would no doubt amend anything placed before them. **Director Bishop** responded that Bacon Bingo, Bar Stool Bingo, and No Fee Bingo had been allowed and approved by the agency because the prizes of bacon and dollar value prizes were de minimus. However, these prizes began to evolve into \$200 prizes, or trips to Reno. Director Bishop explained that he and some of the non profit organizations became concerned that an activity that had been reserved for the charities was now being allowed in the commercial environment, albeit under the title of a promotional contest of chance. Director Bishop said that because he needed clarity on this issue, he withdrew the previous approval letters, and brought the issue before the Commission for discussion. Director Bishop noted that while this issue has been on the agenda, staff has not undertaken any enforcement action on these activities. Director Bishop emphasized that he is concerned about regulating this type of activity. However, he believed the de minimus activity is harmless and therefore supported the recommendation to allow the lower level activity until the Legislative session occurs, and to see what occurs during session. **Commissioner Herbold** asked if the Commission passed the rules contained in 6C and 6D rules, and the Legislature takes action in the early part of 2000 making the activity inconsistent or inappropriate, the Commission could just repeal the rules. **Director Bishop** affirmed the rules would have to be repealed.

**Chairman Ludwig** clarified the Commission continues to discuss the No Fee Bingo rule because the people involved have requested the discussions. **Director Bishop** thought it was an appropriate use of WAC rules to clarify a position and he fully supported the Legislature clarifying this issue. He noted that agency staff would be very happy to work with Ms. Porter and other people to draft legislation.

**Commissioner Herbold** made a motion seconded by **Commissioner McLaughlin** to approve the new section on the blue paper – the Mr. DeCou version of WAC 230-46-045 shown as item 6C and the amendatory section to WAC 230-20-192 shown in item 6D. **Chairman Ludwig** reiterated that it had been moved and seconded to adopt the proposed rules under items 6C and 6D and called for further discussion and comment, there was none; he called for the vote. **Ms. Patjens** noted a typographical error - a wrong subsection which should be WAC 230-20-192 subsection 6 instead of subsection 5, which will be corrected in any final filing of the rule. **Commissioners Herbold and McLaughlin** amended the motion to reflect the correct subsections as stated. *Vote taken; motion carried with three aye votes.*

**Chairman Ludwig** addressed a comment made noting that the Commission formerly endorsed the legislation that is presently being proposed by Ms. Porter. He asked whether the Commission should consider this now, or wait. **Director Bishop** believed an early edition of any legislation would probably be much different than the final version. He asked that the Commission endorse the concept of asking staff to work with the gaming industry to submit a package that would take care of the goals set forth. Chairman Ludwig asked Director Bishop if a motion and vote would be appropriate. Director Bishop affirmed it would put more weight on the proposed legislation if there was a formal vote by the Commission supporting the action. Chair expressed the consensus of the Commission for the agency to work with Ms. Porter to draft language that could be considered at the January Commission meeting.

**Rick Newgard**, Seattle Junior Hockey Association, noted that a lot of the audience had not seen the proposed legislation and have no clue what the legislation contains. He asked if the legislation allowed Bingo in taverns, bars, and et cetera. **Chairman Ludwig** affirmed it is now allowable by administrative rule.

**George Teeny**, New Phoenix, expressed his concern that if something isn't done today the issue may be tabled until the new Commission vacancies are appointed. **Chairman Ludwig** acknowledged that if replacements aren't appointed and one of the remaining three Commissioners is unavailable, there wouldn't be a quorum and the Commission couldn't take action on anything.

7. **Age Limit to Participate in Gambling Activities: (WAC 230-12-027), (WAC 230-12-030), (WAC 230-20-210) Rules 7A, B and C.**

**Ms. Patjens** advised these rules were held over because of the petition from Ronald Del Mastro. One of the solutions to the petition was to insert some language into the rule about Bingo advertisements directed at children. Item 7A, contains new language in subsection 3 that states all Bingo advertisements directed to minors shall include language indicating that all minors must be accompanied by a member of their immediate family or a guardian who is at least 18 years old. A letter was received from Mr. Del Mastro indicating he would not appeal the denial of his petition because of the Commission's assurance they were addressing the issue in their rules package. Ms. Patjens noted all of the age limits will now be set forth in one rule, contained in item 7A. Generally, the age to gamble is 18, with one exception if a child is playing Bingo and he or she is with a guardian. People under age 18 may play amusement games.

**Ms. Patjens** stated that item 7B clarifies when a business can offer alcohol as prizes. It is usually not allowed, but there are exceptions in subsection 2. Liquor can be given as a prize for unlicensed members, only at raffles - if the organization has received a permit from the Liquor Control Board. The agency worked with the Liquor Control Board on these rules and has a confirming e/mail (under tab 6) that they agree and support the rule.

**Commissioner McLaughlin** asked if there were many children who play Bingo with their families. **Carla Stanford**, Seattle Skating Club Bingo, said that it has been her experience that there aren't a great deal of children who play Bingo – it is more an exception to have children's days. **Commissioner McLaughlin** thought no one under age 18 ought to play Bingo. **Chairman Ludwig** called for public comment. There was none, the public hearing was closed, and he called for the Commission's decision.

**Commissioner Herbold** moved to adopt New Section WAC 230-12-027 and amendatory section WAC 230-12-030 and repeal Section 230-20-210. **Commissioner McLaughlin** seconded the motion with some concern. Chairman Ludwig said it has been moved and seconded that they adopt the rules listed in 7A, B, and C. He called for further discussion or comment and then called for the vote. Vote take; motion carried with three aye votes.

8. **Gambling Service Supplier Rules: (WAC 230-02-205), (WAC 230-02-206), (WAC 230-04-119)**

**Ms. Patjens** reported these rules were filed after the last Commission meeting. Under the proposed rules there are two categories of businesses that would have to be licensed as gambling service suppliers. One would be businesses that provide components as part of a manufacturing process. If a company is making an electronic Bingo card dauber, but then part of it is sent to another company for the final installation and manufacturing, the first company that makes the component would need to be licensed as a gambling service supplier. Ms. Patjens noted that in the past it hasn't been clear whether that company needed a gambling service supplier license or whether they needed to have a manufacturing license.

**Ms. Patjens** noted the other category of businesses that would have to be licensed under this rule would be businesses that are training individuals for activities that require a license. Since the implementation of the enhanced card rooms, three or four dealer schools have opened where people are actually teaching dealers how to deal cards, et cetera. The agency felt it was important to have the people actually teaching dealer procedures to be licensed. Ms. Patjens clarified that under the rules, the accredited institutions of higher education would not have to be licensed, only the employees who were doing the training would have to be licensed as gambling service supplier representatives.

**Ms. Patjens** reported that item 8A is a definition of the gambling service supplier, and adds in the two types of businesses required to be licensed. Item 8B defines the gambling service supplier

representatives. Item 8C deals with licensing of the gambling service supplier -- the business itself, and clarifies that if one is an owner of gambling service supplier business, then that person doesn't also have to get a license as a gambling service supplier representative. If an owner of a card room, has already had a background investigation completed by the Gambling Commission, the owner doesn't have to get a separate license as a card room employee. Ms. Patjens noted that staff recommends further discussion.

**Chairman Ludwig** called for questions and opened the meeting for public discussion and mentioned it would not be the last time for anyone to comment.

**Dennis Zaborac** with Tab Wizard, noted that Tab Wizard sells a point of sale system for pull-tab retail. He addressed a gray area in defining a gambling service supplier, especially with regard to Section 1A, Providing Consulting or Advisory Services. He noted that for the last 25 years there have been a handful of management companies for pull-tabs. For the rest of the industry, when an operator gets a license, he's looking for a little advice -- he's getting it from distributor reps, manufacturer's reps, and from him. In his particular situation, he sells this computer system, it's sold directly from him and sold through pull-tab distributors; it's also wholesaled to independent distributors, and sold statewide at the same price. Mr. Zaborac advised that when he installs this computer system, operators ask him questions like which games to purchase, which games are the most popular to use, and how much money they can anticipate making on various games. These questions are being asked of the distributors and the manufacturers, and they are looking for answers. Mr. Zaborac asked if it is the intent of this rule that new operators have to go to a "licensed" pull-tab management company to get advice. The management companies available now are generally taking about half of the first three-year's profit for that information.

**Chair Ludwig** asked Mr. Zaborac if he was licensed as a manufacturer or a distributor. **Mr. Zaborac** said he was not licensed and that is what he wanted clarified. He advised that he does not provide gambling equipment, he provides a cash register system for pull-tabs. He noted these systems have been in existence for 25 years, and that he didn't know if any of the companies are licensed or have ever been asked to be licensed. Chair Ludwig asked if in his present capacity, if he is giving consultation or advisory answers to those questions such as which game is the best? Mr. Zaborac said he would. Mr. Zaborac believed the question is not whether he provides information for compensation--it is the way the law is written, and there's no doubt he gets compensation. Mr. Zaborac asked if the compensation referred to is for the machine, or for the advice. He advised that he could document that he has been giving free management advice for ten years. He asked if the fact that he makes the machine a just cause for giving up his right of free speech.

**Director Bishop** responded that the agency has two basic concerns. If it has to do with the act of gambling, then the agency wants to ensure that anyone involved in it is qualified to be involved. The agency doesn't want criminals advising gambling operators on how to conduct gambling activities. This is the very reason the agency got into licensing service suppliers -- because there were people that couldn't qualify for a license advising licensees. The other issue is whether their accounting system is an integral part of the activity. In most cases, software that only has to do with accounting functions has not been a controlled activity. Once they got into some of the house banked games whereby the software relates to the gambling activities (such as progressive games) and is an integral part of the activity; it has been determined these software manufacturers or providers must be licensed. In response to the question regarding giving basic information when selling his software package, Director Bishop stated that staff needed more information before an accurate answer could be provided.

**William McCoy**, W. G McCoy, Inc., and a representative with Game Tech pointed out that in the beginning there were "cash registers" that received information and reported net results on particular pull tab games. Mr. McCoy noted that his firm, which has CPAs and enrolled agents, is unclear in certain areas because of the fact they were an accounting firm until 1994, when they brought Game Tech. Since then, another dead game service was purchased, and they are presently dealing with about 100 dead game clients. Over 50 of them are full accounting clients; besides providing their dead game reports and Gambling Commission information, they report back regarding profitability on food and

liquor, etc. Mr. McCoy asked if are they were allowed to discuss gambling in the same situation as profitability. He indicated they are now asking what their profitability is on fish bowl games, merchandise games, machine games and one-dollar games. Mr. McCoy also noted that he is offering worksheets to help clients complete their excise tax report and expressed his concern that if he puts out a report (only half of his clients are full accounting clients) and only offers it to the half that he is not doing full accounting for, whether he is then getting into the consulting area?

**Director Bishop** said this was very difficult to answer. It appears he is okay with his current license, but as a precaution, Director Bishop suggested that Mr. McCoy talk to Ms. Winslow's staff to clarify any uncertainty. Director Bishop affirmed it was never the desire to get into licensing professional accountants.

**Mr. McCoy** addressed another matter relating to licensing dead game services. Currently, they are paying a license fee when they submit their original application, but nothing is being done to see if they are following the rules. He noted they are not required to attend the gambling schools, no one inspects storage to see if they are storing three, four or six months of product, or if they're storing progressive games properly; and there were no enforcement activities due to insufficient staff. Mr. McCoy encouraged Director Bishop to review this issue. **Director Bishop** responded that if a licensee was in violation of not maintaining the proper retention period and they were hiring services from Mr. McCoy, the agency would have a discussion with Mr. McCoy regarding his responsibility. Director Bishop affirmed that in such a situation, there could be a possibility of action against the license.

**Frank Evans** reported that he uses Mr. Zaborac's software program. He views it as an accounting program because he uses ACPAC for the general accounting functions, which also reports on the profitability of dispensing, machine and bowl games. He asked if ACPAC should be regulated. He inquired if Peachtree and other accounting services would have to be licensed. **Chairman Ludwig** reiterated Director Bishop's comments that if one is providing accounting services, they are not going to be regulated. If the service gives advice and opinions on how they should operate, and which games they provide, Chair Ludwig emphasized this is another matter.

**Chairman Ludwig** declared a recess at 11:10 a.m., and called the meeting to order at 11:30 a.m.

**9. Bingo Rules – Streamlining: (WAC 230-02-108)**

**Ms. Cass-Healy** explained the rules in this package are the result of numerous discussions within the Net Return Task Force comprised of Commission staff members and members of the Bingo industry. The intent of the rules package was to streamline the current requirements as well as clarify others. In addition, changes are being recommended that will allow the Bingo operators more freedom to provide incentives to players. The formats were changed to include subheadings for readability. Staff will request that the rules be filed for further discussion. **Chairman Ludwig** called for questions.

**Commissioner Herbold** advised that she didn't have a problem changing the format to have headers, but she thought it was important that the header makes sense in the context of the WAC rule. She cautioned staff to be careful in how they title the header. **Ms. Winslow** and **Ms. Cally Cass-Healy** said they would review them and make sure they all made sense. **Chairman Ludwig** opened the meeting for public comment. There was none, the public hearing was closed.

**Commissioner McLaughlin** made a motion seconded by **Commissioner Herbold** to file the rules. *Vote taken; motion carried with three aye votes.*

**10. OTHER BUSINESS/GENERAL DISCUSSION:**

**Comments from the Public:**

**Chairman Ludwig** announced a change in the agenda, in order to allow the presentation by the Spokane Tribe of Indians to precede the general business and discussion.

**Presentation by the Spokane Tribe of Indians:**

**Scott Crowell**, Attorney for the Tribe, introduced three of the five member tribal counsel: Greg Abrahamson, Dave Winecoup, and Alfred Peal. The tribal counsel is the governing body of the Spokane Tribe of Indians. He said the reason they wished to make this presentation was to jump start negotiations and bring final resolution to a ten-year-old dispute between the Tribe and the State. The original request made by the Tribe for a compact was in the Fall of 1988, shortly after the passage of the Indian Gaming Regulatory Act. He acknowledged that the Commission had been involved extensively with tribes in the past, but not specifically with the Spokane Tribe. He noted that the Commissioners and staff who participated in the initial negotiation were no longer with the agency and provided the following historical information.

In 1987 the Supreme Court resolved an issue of whether tribes had the right to conduct gaming activities on the reservation. The Supreme Court, in the case of *Cavizon v. California* determined that it was the exclusive province of tribal governments to regulate gaming activities on Indian lands. Congress responded with the passage of the Indian Gaming Regulatory Act. One of the purposes of the Act was to effectuate that decision – to put tribes in a position of creating strong tribal governments, economic development, self sufficiency amongst the tribes and to provide a role for the state, if the state chose to have one, in the regulation of those gaming activities.

**Mr. Crowell** said Congress created a situation where the tribes and the states negotiate government to government, to come up with a process for government gaming activities. It was a straightforward process. The tribe would make a request for negotiations and there would be negotiations. Congress also understood there was a chance that negotiations would not be successful. If there was no compact after 180 days, it provided an opportunity for the tribe to file an action in federal court to seek a court-appointed mediator. If the Court made a determination there was a failure to conclude negotiations in good faith, the Court would then order the parties to conclude those negotiations within sixty days. At the end of those 60 days, if there was no agreement, each side would submit its last best offer to a federal court-appointed mediator. The mediator would make a decision. If the parties didn't consent to the mediator's decision, then the mediator would notify the Secretary of the Interior and the Secretary would promulgate procedures that provide for the governing of the gaming activities on those lands. In the first few years after the Act, that process seemed to work.

**Mr. Crowell** reported that when the Tribe made their initial request, they looked at the Washington State laws and policy regarding gaming, as well as the Indian Gaming Regulatory Act (IGRA), and how the two interact. They drew a conclusion that there was an obligation of the state to negotiate for machine games and that was one of the initial positions from the outset in terms of the negotiations back in 1988, '89, and '90.

**Chairman Ludwig** asked if the statement Mr. Crowell made regarding an obligation on the part of the state to negotiate machine games recognized the Washington State prohibition and the Johnson Act. **Mr. Crowell** said IGRA clearly provides an exemption for the Johnson Act if the machines are played pursuant to a compact that's been negotiated. He believed the question the Chairman was asking goes to how you make a determination of what games are or are not negotiable. The Act says that the state has an obligation to negotiate any gaming activity that is permitted by any person, organization, or entity for any purpose. The case law that originally came out was probably best articulated by the Second Circuit in the *Mashantucket Pequot v. Connecticut* case, which basically said that the Supreme Court test in *Cavizon* was the test to determine what games were permitted and it was a broad public policy test – that if the state engages in various gaming activities and the tribe puts a gaming activity on the table, the state would have to articulate a legitimate public policy reason for not wanting the activity to occur. The law was subsequently clarified by the Ninth Circuit as it relates to Washington State in litigation involving the California Tribes, in a decision known as *Rumsey v. Wilson*. The Court said, the state is not obligated to negotiate for a gaming activity that is not permitted under the state statutes. On appeal to the Supreme Court, the Solicitor General clarified the position of the United States regarding that and said that even if a state prohibits distinct forms of activities, the state must still establish a reasonable characterization of why that activity is prohibited while various other activities are permitted. The tribes concluded that clearly there are types of machines that the state is obligated to negotiate. Back in 1988,



'89 and '90, the position of the State of Washington in the negotiations was "We're not going to discuss and authorize any type of gambling device, period."

**Mr. Crowell** said that an issue remains outstanding with the developments such as the Bingo King device processing pull-tabs with the video screen, the development of the X Game, and the authorities that have the ability to approve games and compare them to a traditional stand-alone slot machine. He asked if the state can meet its burden of establishing a reasonable characterization of why all these types of games are prohibited, but this type of game is permitted?

**Chair Ludwig** asked if that was answered by Judge Van Sickle. **Mr. Crowell** said the tribes did not believe so because at the time that case was argued the tribes chose amongst themselves not to pursue traditional slot machines.

**Mr. Crowell** addressed future negotiations. He was not insisting on a compact that authorized slot machines. Mr. Crowell believed the X Game comes far along in the process towards a game that is commercially and economically viable for tribal governments. He believed that even under Judge Van Sickle's test, if they take Judge Van Sickle's opinion as being a clear and absolute correct statement of the law regarding Washington Gambling Statutes, there are games beyond just the X Game that would be authorized, or could be authorized under existing statutes, and therefore creates the obligation of the state of Washington under the Indian Gaming Regulatory Act to approve those games. He stated they would like to discuss alternatives to the X Game that fall within the framework of the Chehalis opinion.

**Chairman Ludwig** asked if they had not done that with the amendments to the existing compacts. **Mr. Crowell** said that although they are pleased with the X Game, they don't think the amendments to the compacts truly embrace Judge Van Sickle's opinion. Judge Van Sickle focused on two different statutes – the Fund Raising Statute and the Lottery Statute. The Fund Raising Statute does not apply to lotteries, and the Lottery Statute doesn't apply to fund raising events. The Tribe reads his opinion as instructing the state to negotiate for two types of machines. One type of machine would be under the Fund Raising Statute, with the only restriction being no insertion of coin or currency. The other machine is under the Lottery Statute with the only restriction being no engagement by the player against the machine. The finite deal requirement that it not be a house-banked or banked game meets the restriction under the Lottery Statute and the no insertion of coin or currency – the smart card element – meets the fund raising event. The tribes believe that if there's no insertion of coin or currency, then that machine should be able to engage a random-number generator or alternatively, if you have a machine that's a finite deal under the Lottery Statute, that one should be able to insert coin or currency. The fund raising event goes back to the point that fund raising restrictions don't apply to the lottery, and lottery restrictions don't apply to fund raising events.

**Commissioner Herbold** asked if the X machine to which he referred was the Tribal Lottery System. **Mr. Crowell** affirmed they call it the X Game because it's Appendix X to the existing compacts. Commissioner Herbold clarified Mr. Crowell's opinion that when someone goes to the cashier and buys a smart card or credit card to insert in the machine, he is not considering it coin or currency and therefore did not qualify. Mr. Crowell affirmed that was his understanding of how the X Game came about – that in the negotiations between those tribes involved in the Chehalis litigation and the state. Mr. Crowell said that in 1991, the state entered into a compact with the Tulalip Tribes. At the time, the Tulalip Tribes had a profitable and successful Bingo hall, and they were willing to agree to a prohibition on gaming devices because the state was willing to agree to authorize house-banked Blackjack. They worked out the issues of regulation and control, and a compact went into place. Mr. Crowell didn't believe the Tulalip's had any intention that their compact would become a model for the state, but the state used the Tulalip Compact as a cookie-cutter model.

**Mr. Crowell** noted that market studies made it clear that without some type of viable commercial machine gaming, the Spokane Tribe could not survive economically. The Spokane Tribe has responsibility for over 2,000 members on a 133,000 acre reservation with dwindling resources on how to provide central governmental services, and needed to look to gaming for a source of governmental revenue. The compact on the table in 1990-91 wasn't viable, so the Tribe opted to pursue its remedy

under the Act and pursued their option to file suit in federal court and get a federal court mediator appointed.

Nationally, the process took a sharp left turn. In litigation involving the Mississippi Choctaw Tribe, the state argued that IGRA violates the Eleventh Amendment of the Constitution – that Congress did not have the authority to abrogate or take away a state's sovereign immunity from suit brought by Indian tribes against the state without the state's consent. The state of Washington raised this defense in front of Judge Van Sickle. Judge Van Sickle didn't believe the tribes had the authority to file suit against the state, but did have the authority to file suit against the Governor. He decided to let the Ninth Circuit resolve this issue. The tribes didn't agree with the first part of the decision and the state didn't agree with the second part of the decision. The Ninth Circuit overruled Judge Van Sickle and ruled in favor of the tribes saying that the federal government did have the authority to abrogate state sovereign immunity from suit. However, at that time, the Supreme Court had already accepted review of the Seminole case out of Florida and that decision was stayed and ultimately vacated in 1996, when the Supreme Court said that Congress did overstep their bounds and, therefore said, "you can't compel the state into federal court."

While that process was going on, the Colville Tribes negotiated with the state for another year. The Colville Tribes also pursued their remedies under the Act and went in front of Judge Neilson. Judge Neilson agreed with Judge Van Sickle on the Eleventh Amendment issue, and agreed with the state on a Tenth Amendment issue, which was an argument that Congress doesn't have the authority to compel the state to negotiate with the tribes. Judge Van Sickle dismissed the case on the grounds of the Tenth Amendment. In doing so he interpreted the Act in a way that provides an adequate remedy for the tribes and cut out all the compacting provisions. Therefore, for the Colville Tribes, there is an opinion that has never been appealed, which says there is no such thing as a tribal state compact.

The Colville Tribes believed this meant they didn't need a compact and the state believed the tribe couldn't get a compact. Both sides claimed victory and neither side appealed. It became a final non appealable judgment. In 1994, the Spokane Tribe made a decision and informed the United States they were going to go forward with full casino gaming in the absence of a tribal state compact. The United States disagreed and filed suit seeking an injunction to enjoin the Spokane Tribe from continuing their operations. The tribe appealed and filed an emergency motion to stay Judge Van Sickle's order in the Ninth Circuit. In June of 1994, they were granted an order that allowed the tribe to continue to operate its full casino gaming in the absence of a tribal state compact, pending litigation. In March of 1998, the Ninth Circuit overturned Judge Van Sickle and said that it was inappropriate to take enforcement action against the tribe when the reason the tribe didn't have a compact was because the state had not consented to the mediation negotiation process established by Congress. The U. S. Attorney disagreed and filed another suit, this time under the Johnson Act, against the machines. The case is actually the United States versus 1020 gaming devices located on the Spokane Indian Reservation. At the same time they filed suit against the devices on the Colville Reservation and the cases were heard together last year in front of Judge Van Sickle. Judge Van Sickle ruled that the Johnson Act did give the U. S. Attorney the authority to seize those machines. Two weeks after he issued his Order he granted the Motion to Stay made by the Tribes and so in December of last year, he stayed his decision or the implementation of his decision pending the appeal. The appeal was put on a fast track and an oral argument in front of the Ninth Circuit is anticipated next week.

**Mr. Crowell** said the Spokane Tribe maintains the position that as long as the state fails to consent to the negotiation mediation process set forth by Congress, the Tribe has the lawful right under the Act to continue to game in the absence of the tribal state compact. The state has denied the Tribes the opportunity to litigate the issues with the state and instead has put the Tribes back into litigation with the United States. Basically, the United States is arguing the position for the state when the Tribe's dispute is with the state. The Tribe's dispute isn't with the U. S. Attorneys. The U. S. Attorneys are the Tribes trustee – it has created a very awkward situation.

**Mr. Crowell** shared the Tribe's vision for developing their property into a destination resort that would benefit all of Washington State, and provide a sense of pride in economic development for the Tribe. The Tribe's plans include a 100 room hotel, convention center and a new casino. Mr. Crowell stated that it is very difficult for the Tribe to go forward with a \$40 million investment with the reservation gaming activities issues still hanging out there, and reiterated their desire to resolve them through the negotiation process. **Chair Ludwig** reminded Mr. Crowell that the three commissioners present and Commissioner Forrest are not the negotiating agents, but rather the Director or his designee. He inquired what was standing in the Tribe's way of reaching a compact. Mr. Crowell responded that in addition to the X machines, they would like to talk about other types of machines.

**Chair Ludwig** addressed the most favored nation provision in the existing 19 or 20 compacts. **Mr. Crowell** emphasized that the Spokane Tribe is not looking to create something that Spokane would be entitled to and other people were not. He noted the fight over the last 10 years hasn't been about getting the Spokane Tribe machines; it's been about restoring to all Washington Tribes the rights they believe were vested in them by the passage of the IGRA. They understand that a possible consequence of going to another type of machine would be opening that machine up to the compact tribes as well.

**Commissioner McLaughlin** asked if the introduction of the X Machine affected the Spokane's revenue. Mr. Crowell responded that it was difficult to calculate because the game is so new.

**Mr. Crowell** advised another issue they wished to discuss at the negotiation table included the number of gaming locations. The Spokane's deal with 133,00 acres in a rural part of the state. Limiting the Tribe to one location would be a impediment on the Tribe's ability to use gaming for revenues. In that same context, they wished to talk about the number of machines. Mr. Crowell said they are not married to the idea of no limits (he pointed out there are no limits on the number of lottery terminals), and they are not opposed to having some number, they just think it should be a number that reflects their circumstances. In terms of making their resort viable, the Spokane's would like to talk about the hours of operation, with the possibility of 24-hour gaming as opposed to 20-hour gaming. Mr. Crowell advised the Tribe would also like to see some changes in the wager limitations, and it was noted the Coeur d'Alene facility 15 miles away has no limits.

**Mr. Crowell** expressed his appreciation for the opportunity to address the Commission and expressed his belief that the two sides should be able to work government-to-government without continuing to fight in the courts. **Chairman Ludwig** assured Mr. Crowell that the Commission shares his desire to resolve the controversies and thanked the council members for attending.

#### **OTHER BUSINESS:**

**Chairman Ludwig** called for comments from the public. He noted the Commission will be back in session this afternoon for three reviews on the agenda, and this would be the end of the regular agenda and business.

**Director Bishop** announced that Commissioner Herbold has given notice that she will be leaving the Commission in January, after two and a half years of service. During that time two of the largest changes in Washington policy have occurred that really impacted the agency – the change in social card games and the X Machines. The issues before the Commission have been large and often controversial. Director Bishop stated that staff have appreciated Commissioner Herbold's ability to bring balance to these discussions, and her ability to offer guidance at times when staff might have been going down the wrong path. Commissioner Herbold has been a strong supporter of the staff they have appreciated the support and hate to see her go. Director Bishop presented a plaque in appreciation for Commissioner Herbold's service to the citizens of Washington.

**Commissioner Herbold** responded that it has been a pleasure to serve the Commission. She noted that she came to the Commission with no knowledge about gambling. She said it has been an honor to serve, and noted her fellow commissioners are very dedicated and professional people.

**Chairman Ludwig** echoed the Director's comments and noted that Commissioner Herbold had been a real asset to her colleagues on the Commission because of her attention to detail, and her thoroughness with the rules. He said the Commission will miss her personally and professionally. **Commissioner McLaughlin** said she appreciated getting to know Commissioner Herbold and seeing the other side of the political spectrum.

**John Beadle**, Washington Charitable and Civic Gaming Association, came forward to thank Commissioner Herbold and present her with a gift from the non profits of the state of Washington. It was presented with their warmest appreciation for her interest and diligence in digging into what the non profits in the state were doing for the charities they serve. Mr. Beadle recalled that it was obvious that Commissioner Herbold would become a real ally of the non profits, and they were certainly going to miss her, and know it will difficult to find her replacement. Mr. Beadle presented a one-of-a-kind glass vase by Seattle artist, Dan Bergsma.

**Vito Chiecchi**, Recreational Gaming Association, said it is always a sad occasion when a member of the Commission leaves. It means they will have to find someone who will take the time like Commissioner Herbold did to find out what the industry is all about. Mr. Chiecchi said the RGA has appreciated Commissioner Herbold's inquisitiveness and fairness, and he wished her good luck and lots of fun with her new grandchildren. He said they hoped to see Ms. Herbold in the political arena because they know she will make a fine addition to the Legislature or the Congress, or whatever she might choose. He extended RGA's best wishes and good luck in her next endeavors.

**Bob Tull** stated that one of his ceremonial duties in life was to welcome Commissioner Herbold to the Association of Former Commissioners. He said they didn't expect her this soon, and he wished she were in a position to stay on the Commission because she obviously completed the learning process faster than any commissioner in the history of the Commission.

With no further comments Chair Ludwig adjourned the open public meeting at 12:30 p.m.

#### 10. **PUBLIC HEARINGS:**

**Chair Ludwig** called the meeting to order at 1:30 p.m., for three cases before the Commission for review: 1) Petition for Review by Doran's Dead Games, Inc., 2) Groovy's, and 3) the Spot Tavern. He said he had informed the attorneys for the petitioners that each side will be allocated 10 minutes to present their case.

##### **Appeal – Denial of Application for Gambling Service Supplier License Doran's Dead Game Service, Inc., Mukilteo:**

**Michael Zimmar**, Attorney for the petitioner, addressed a decision to dissolve or have resolved the issue they submitted regarding initial declarations after the hearing date which was June 4<sup>th</sup>. He advised that they had a number of endorsement declarations they wanted to submit post the hearing, and were told that would be okay. The declarations were submitted and he had been advised by letter and counsel today, that this would be on the record and would be appropriate. He said he wanted to know if those have been submitted. **Chairman Ludwig** asked Ms. Patjens or Ms. Froud if those were included in the exhibit section the commissioners received. Ms. Patjens said they were not because they weren't exhibits at the hearing so they weren't in the commissioners' packets.

**Mr. Steve Reinmuth**, Assistant Attorney General for the Commission, explained what the declarations were. He noted this is a case involving the denial of a license application because of a criminal record. The declarations that were submitted late (with the apparent concurrence of the former assistant attorney general advising staff), are more of the same that was previously submitted. Instead of four or five people saying this person's a good person, don't pay attention to the criminal record, you should go ahead and grant the license, it's just several more of the same kind of thing. By letter dated November 10, staff wanted Mr. Reinmuth to be crystal clear with Mr. Zimmar that the declarations would not be considered by the Commission because they had not been submitted to the Commission for review, and

because, by Commission regulations and the Administrative Procedures Act, the Commissioners are required to review what the administrative law judge (ALJ) read and saw. Mr. Reinmuth indicated that he and Mr. Zimmar discussed this matter today and arrived at a couple of options that he will leave it up to Mr. Zimmar to request what he'd like to see happen.

**Chairman Ludwig** said it was his understanding they were reviewing the ALJ's initial order. He then asked Mr. Zimmar if he agreed with Mr. Reinmuth that the declarations were of the same nature that were submitted to the ALJ. **Mr. Zimmar** affirmed they were additional documents from different people in addition to the 11 or 12 that were submitted already. That it would further corroborate that this company is doing a good job and there's no problem. He stated this is a technical issue. He said the AG had said it was okay and they went to some trouble to ask clients to speak on their behalf. Chairman Ludwig said that the fact that Mr. Reinmuth relied on counsel's assertion is pretty significant. He said he had no problem with considering them. He asked if Mr. Zimmar was satisfied with the commissioners knowing there were four or five additional good character references available saying similar things as have been stated on behalf of the petitioners. Mr. Zimmar concurred.

**Mr. Zimmar** explained that this matter, in capsule, is a situation where around June of 1990, a King County Superior Court found his client guilty of theft in the first degree. She plead and cooperated with the Court, and has completed all of her sentencing. She had stolen the sum of \$52,000 from her employer at that time during a period between 1988-89. This matter was related to a cocaine problem she had, and she was trying to finance her habit. She realizes that it was not the appropriate thing to do. Out of the restitution of \$52,000, she has paid back roughly \$21,500. This is the only offense she ever had prior to 1990, and subsequent to 1990. She has had no infractions or criminal offenses either at the misdemeanor level or the felony level.

**Mr. Zimmar** said his client totally cooperated with her employer at that time, even before charges were filed, to the point where she showed him where the accounting problems were and assisted him in finding the errors. She was sentenced to 90 days, 30 days of which were suspended and she served a term of 60 days in jail. She continued drug counseling for a period of two years and has completed counseling. She was subject to UA testing for the two-year period, and she was ready, willing and available to do that at any time through her CCO. Mr. Zimmar asked the commissioners to look at one of the declaration endorsements from his client's CCO. He had written a two-page document that sets out that she was attendant; dutiful; and that they never had any problems with this lady. As a condition, she was required to advise any prospective employers after the 1990 date about the theft.

**Mr. Zimmar** advised his client, started a similar business with her sister in 1992, which means she has been doing exactly what she's doing right now since 1992, without a problem. She's been audited 10 to 12 times and she has passed all of the audits since 1992. She and her husband incorporated in 1994, and continued to take over the business when her sister dissolved their relationship through a partnership. She applied for a license in December of 1997. She was denied in January of 1999, he believed because of the theft record. Mr. Zimmar emphasized this is not a corporation or an individual that would like to try the pull-tab business as a service supplier – his client has been doing this for seven years. Mr. Zimmar addressed what a person needs to do to rehabilitate themselves, whether his client has done that, and whether there's really a need to continue to rehabilitate herself. He asked if there is a term, a deadline, a year or a date that she would be able to make a successful application -- or would she always have the scarlet letter? Is she never going to be able to do this even though her business does not handle money? She never touches money. She counts pull-tabs. She does data entry and they in effect give back their customers a spreadsheet to show them exactly what they've done. There's never been a complaint.

Mr. Zimmar asked who would be better for endorsement character declarations than the people she deals with? "They only know her on a business level. They aren't necessarily personal friends. They did submit some from employees. Her mother submitted something. She's an accountant in Seattle. She told a little bit about her daughter's situation and the pain she's gone through since 1988-89-90. She's not happy about what happened to her back in 1990, but she has done everything possible rather than

being rubber stamped right now to make it over this hurdle – to try to move on with her life. The business now has about 100 customers. Over the last seven or eight years they have worked very hard to put this thing together and they would like to continue in this fashion, but never to forgive her for the rest of her life is wrong.”

**Mr. Zimmar** said they were well aware of the mentality of not having criminals involved in gambling. Mr. Zimmar said his client has paid her time, and her dues, she's done just about everything that one can do under the circumstances. He asked the Commission to give his client an opportunity to proceed forward. Mr. Zimmar reported that his client runs the business with integrity and honesty. She doesn't feel like a criminal, she's had 10 years of sobriety, whether its alcohol or drugs. She's extremely remorseful. Her customers like her. She's been under audit and she has passed every audit. She's paid her taxes. This is her livelihood and her dream right now is to go forward.

**Chair Ludwig** asked Mr. Zimmar if he does much criminal practice and received an affirmative answer. He asked if this was a Class B felony and received an affirmative answer. He asked if it would wash out in 10 years. **Mr. Zimmar** replied that it could wash out in 10 years, but there's also a process of expungement, which expunges the whole record from the computer. He believed his client would be a great candidate for this based on the CCO's reports and everything that she's done. Chair Ludwig asked what the time period was for her to wait. Mr. Zimmar said he didn't know the answer, but he has seen them for five years for misdemeanors and gross misdemeanors. Chair Ludwig indicated his recollection of a five-year statute of limitations that corresponds with the five year for expungement and the ten year Class B felony statute of limitations corresponds with the 10 year wash-out or 10 year vacation or expungement. Chair Ludwig called on Mr. Reinmuth.

**Mr. Reinmuth** explained that in January of 1999, the Commission said that they wanted to change the way that the Dead Game Services were supplied in Washington State and they wanted licensure. They wanted, based on some things that they'd seen and some policies that they were adopting, to change the way this was done. They imposed the strict standards that are applied to all other licensees in Washington State for the privilege of having a gambling license, or in this case, a supplier license.

**Mr. Reinmuth** said that what Mr. Zimmar is asking, is that the Commission take into consideration the time period since the plea of guilty, to now. He indicated that he is not going to suggest the record supports anything other than the fact that Mrs. Doran has tried to put things right. However, this Commission is charged and actually asks much more of a potential licensee – a very strict standard. It's by clear and convincing evidence which they have seen in the initial Order the administrative law judge heard exactly what Mr. Zimmar just told the commissioners, and said it's not enough. He said they understand that Ms. Doran has taken steps, but for the purposes of this statute and this law and the public protection, that this Commission wants to consider as it denies or grants applications for service suppliers. This agency would submit that if expungement occurs, maybe there's an opportunity for reapplication. Mr. Reinmuth said he would not speculate on whether a court would grant or not grant an expungement in this case. He does not know whether this Commission would change its mind in another year or two – whether enough time will have gone by. At this point, however, given the very high standard of proof, it's not been met.

**Mr. Reinmuth** said the commissioners know there was an initial order entered – and he wanted them to be clear for procedural purposes that what they are really reviewing and what they are going to be asked to affirm today is an amended initial order of August 3, 1999, which denied the application for a license to conduct a gambling activity as a service supplier. The time period under discussion is two years; 1987-1989. It's an embezzlement of \$52,000. This is not a traffic ticket or misdemeanor, but rather a Class B felony. Over a period of time, it's exactly the kind of moral turpitude that the Commission and the Legislature wanted to be aware of when it determined whether someone should be granted a license in this state. It's the pattern of the embezzlement over a sustained period of time that makes this application something the Commission should deny. Mr. Reinmuth said the record clearly supports, and he proposes an order affirming the ALJ's initial order.

**Chairman Ludwig** called Mr. Reinmuth's attention to the fact that according to the record, Ms. Doran did disclose the conviction on her application, which Mr. Reinmuth affirmed. Chairman Ludwig asked if there were some time period the agency would think would be long enough for her to have gone crime-free and trouble-free. **Mr. Reinmuth** said he had not specifically discussed this with staff, but it was his impression it would be dependent upon the facts and circumstances of any given case. What was the crime in question - what was the dollar amount of the money - was there a prior conviction - was it just one - was it a felony or misdemeanor - what kind of license? Those are the kinds of things staff would want to review before advising the Commission. Mr. Reinmuth advised that to project what under the circumstances might be an appropriate time period would be something that he wasn't comfortable doing right now. He said it may be something he could discuss with staff and bring back to the next meeting, or the Commission may wish to have an interim report prior to the next meeting.

**Commissioner McLaughlin** asked if Ms. Doran's husband would be able to keep the business going until there's such a time that Ms. Doran is given a license. **Mr. Reinmuth** responded that as he understands the way the company is currently configured, the answer is no. Because the Doran's, themselves, are the primary shareholders, no. If Mr. Doran as the husband of Ms. Doran, was the sole shareholder and the operator, there would be some concerns there as well because they're a marital community. **Chair Ludwig** said it is the corporation's license that's under review and Mr. Reinmuth agreed.

**Commissioner Herbold** referred to Ms. Doran paying her dues; and noted that in connection with the payments she has been making to her former employer of \$200 per month for the past 10 years, the payment has applied to the interest only, and that the principal is still out there. **Mr. Zimmar** affirmed and noted a motion could be made before the Superior Court to convert the interest to the principal application, otherwise his client may never get outside of her predicament. Commissioner Herbold noted that even if the Commission assumed there was no more interest paid from this date forward, just dealing with \$52,000 at \$200 a month comes out to 22 years. Mr. Zimmar believed they could increase the payments to \$500 or \$600 as an option for the Commission to consider. Mr. Zimmar suggested his rebuttal is exactly what Commissioner McLaughlin mentioned – that perhaps by converting part of the incorporation inside and having his client step out of the corporation, and to bring someone else in. At this time Ms. Duran does purely data entry, there are five employees, the employees do the bulk of the work, and Ms. Duran could do data entry or answer telephones. He noted his client doesn't handle any cash whatsoever.

**Mr. Zimmar** said he relied on almost 10 years of clean history and wondered how far a person has to go - does a person come back in five years - what will have changed – it will be the same set of facts. If his client continues to go the same way she's going, which they hope and believe that she's going to go, they will be back requesting a license. Mr. Zimmar suggested a conditional license, especially if the Commission feels they can't give his client a "full blown" license. This would be in consideration for what she has gone through – jail, pain, 10 years of payment, running a business for seven years and not having a problem, being subject to the audits, and passing. Mr. Zimmar affirmed the Commission could require random audits, UAs, auditing and check ups; with all costs for such to be paid by the corporation. Mr. Zimmar emphasized the Doran's really want to stay in this business, it has been their livelihood and has sustained them economically.

**Commissioner Herbold** asked if the court would even consider expungement if any portion of the money amount was still due, because once they expunge the record it would be hard to follow up on the payments. She asked what might be a prerequisite for expungement. **Mr. Zimmar** believed he would have to submit the expungement request to the criminal record, and continue jurisdiction on restitution, and continue jurisdiction by voluntarily agreeing to extend jurisdiction so his client could make her payments. He believed that the employer had been compensated through the insurance company. Mr. Zimmar wasn't sure where the restitution money was going – perhaps to the Restitution Department of Superior Court, but he assumed that the company had these kinds of embezzlement and theft endorsements on their policy – and the business owner had been compensated in full for his loss. Commissioner Herbold asked if Mr. Zimmar knew that for sure. Mr. Zimmar responded that he did not,

but that he could have an answer for her in one day. Mr. Zimmar said his client knows for a fact that the employer had coverage, and although it is not on the record, it is more than likely the insurance compensated the owner for the theft.

**Chair Ludwig** closed the hearing and said the Commissioners may be able to meet before adjournment today and possibly have an answer; if not, they will let him know their decision as soon as possible.

### **Appeal – Revocation of Card Room and Punchboard & Pull-Tab Licenses The Spot Tavern, Mountlake Terrace:**

**Chair Ludwig** affirmed that each of the Commissioners had reviewed the records, the transcripts and the findings of the administrative law judge. **Mr. Reinmuth** pointed out that in the interest of saving time for both cases, Mr. Platis has effectively admitted there's no dispute on the facts – this is more of a question regarding the penalty. **Chair Ludwig** asked if Mr. Platis wanted to proceed with that understanding.

**Harry Platis**, Attorney for The Spot Tavern, introduced himself and his client, Michael Stephens. He concurred and stated that he was seeking a commission of equity, he believed the facts and circumstances justify that kind of a situation.

**Mr. Platis** reported that in February, the Washington State Gambling Commission found out about an individual named Troy Bowers and the Bowers scheme. Mr. Bowers was going around to various establishments in the King County and Snohomish County area and telling owners that he could put in Blackjack and operate it for them. Initially the Gambling Commission believed that Mr. Bowers and the various people he contacted were in business together, and sharing profits with the owners of the establishments. In fact, he was not. Mr. Bowers was out there on his own as an individual doing business on his own to make a profit. He was hiring various individuals to run Blackjack games and he was going to the facilities and using the facilities and telling the owners he would do the Blackjack and telling them how they could make money. He took all the profits and he provided the dealers for the operation of Blackjack.

**Mr. Platis** believed that Mr. Bowers was allowed to get away with this scheme because of the irregularities in the gaming regulations. He said there is a checks and balance situation where the Gambling Commission was putting out certain rules and regulations and seeing how they work. If they didn't work, then they get changed. In this particular case no one put a maximum lid on the amount of money that could be used as the bank, so Mr. Bowers established his bank at \$2,000. The average player doesn't have \$2,000 to bank, so consequently Mr. Bowers captures the bank himself and actually controls it, he does this in about 10 or 15 places.

**Mr. Platis** said that Mr. Stephens had his card room Blackjack license for approximately two months when he was approached by Mr. Bowers who was running public operations in King County. Mr. Stephens was assured those operations were legal and sanctioned by the Washington State Gambling Commission, and that was his understanding. He allowed Mr. Bowers to train certain individuals and let him run the Blackjack game, and it wasn't long before he was closed down. **Chair Ludwig** interjected with a question about the two months prior to Mr. Stephens' contact with Mr. Bowers and whether he was operating player-supported Blackjack at that time. Mr. Platis responded that Mr. Stephens was not operating until Mr. Bowers got involved. He ran a tavern with some pool tables and one Blackjack table.

**Mr. Platis** noted there is no willful disregard by Mr. Stephens for Washington statutes or regulations. That was found by the ALJ. The judge did find the aiding and abetting of the activities of the one of Mr. Bower's employees. Mr. Platis stated his client's conduct was not intentional nor a willful violation of statute; he just believed the activity carried on by Mr. Bowers and his people was legal and sanctioned. Mr. Platis felt it was important to review what happened in this case. Mr. Stephens had three licenses, and all three were revoked. His client had been in business since 1972, and in that particular location



since 1991. He's never had a violation with respect to any gambling problem or liquor license problem. His punch board and pull tabs are the life blood of the tavern business. He had 16 people working for him, and today he only has five. He's in the process of filing bankruptcy or Chapter 11 right now because of what's happened. It's been nine months since he had a summary suspension and he's been out of business with all three licenses. Mr. Platis noted his client is asking for the return of only one license, the punch board and pull tab license. He doesn't want to be involved in Blackjack or card rooms, and he sincerely needed to have his punch boards and pull tabs licenses back. Mr. Platis said Mr. Stephens is an individual that got caught up in a misleading situation caused by an individual who took advantage of the rules and regulations promulgated by the Gaming Commission, and in a loop hole which has now been rectified.

**Chair Ludwig** inquired how it was a loop hole? **Mr. Platis** responded that it was a loop hole because there was no amount of money set forth for the amount that a player could put up for the bank. It is now \$500, whereas before there was no ceiling. Mr. Bowers arbitrarily took a figure of \$2,000 as a minimum, which in effect cut out the normal player who could come and put money in. Chair Ludwig said he understood the argument, but wondered how that got to be player-banked Blackjack, when a third party puts up a couple thousand dollars and begins teaching dealers and not playing. Mr. Platis responded that what Mr. Bowers was doing was training other people and giving other people money who were in fact players. Chair Ludwig said that it was hard for him to comprehend there were 15 people that didn't understand Washington player-supported Blackjack, when they're business people that got a license and had initial direction from the agency.

**Mr. Platis** said he could understand that comment. In Mr. Stephens case, he received his license two months before, and he believed that the activity was allowable because it was occurring in establishments in King County and Everett. Mr. Platis believed this goes to his intent and his understanding. **Chair Ludwig** asked how Mr. Stephens received income or profit from his license. Mr. Platis said that he did not, there were tips paid to various employees, and so forth. Chair Ludwig asked if he received a per hand fee. Mr. Platis apologized and affirmed there was 25 cents per hand paid and that was the only income received, there was no contractual relationships, no independent contracts, no employee-type contracts. Chair Ludwig verified the dealers weren't employees. Mr. Platis affirmed. Chair Ludwig noted that Mr. Bowers was running Blackjack games without a license. Mr. Platis affirmed. Chair Ludwig said Mr. Stephens was not aware Mr. Bowers was running the Blackjack game. Mr. Platis advised that Mr. Stephens didn't understand the totality of Mr. Bowers' backup. Mr. Bowers had a card room license from another establishment and he was aware of that because his partner advised him of that fact, so he knew something about Bowers and his legitimacy and credibility. Mr. Platis asked the Commission to review this record and look between the lines and see what was going on in relationship to the state. He said, "the state had no jurisdiction over Mr. Bowers because he didn't have a license and they had no way to go after his activities, even though in a sense they helped created the situation by not having a maximum on the amount of the bet that could be bet in the Blackjack game." Mr. Bowers is out scot-free, made a lot of money, and the state has no way to get at him except going through the licensees who allowed them to be there. Chair Ludwig asked him about a criminal charge for professional gambling. Mr. Platis said that has not come about. Chair Ludwig asked if he committed that offense. Mr. Platis said he believed so, but he has never been charged and he did not think he would be charged.

**Commissioner McLaughlin** asked Mr. Platis if he was Mr. Stephen's attorney when he was getting his license and **Mr. Platis** advised that he was not, that he picked up both of these cases after the summary suspensions.

**Mr. Reinmuth** affirmed the facts are uncontested and he called the Commissioner's attention to the fact that there were more than ten separate violations of the rules adopted by this Commission governing Washington Blackjack. He reminded them that unless an establishment is part of the Enhancement Program Pilot Project, they are required to play Washington Blackjack and if this Commission's rules are going to mean anything, then staff is asking the Commission to enforce them, and that is what the administrative law judge said. Ten different times, they ignored what this Commission has said licensees

need to do if they are going to run Washington Blackjack - unless they are under the heightened scrutiny of the Appendices, which clearly they agree this licensee was not. Mr. Reinmuth said he was troubled at hearing, and he is troubled today by a statement that this is a loophole and that this licensee was a victim. What the record reports is something quite different.

**Mr. Reinmuth's** first point was to say that the record supports quite clearly as Mr. Platis finally mentioned, that Mr. Bowers was not an unknown person to the partners in this business or in the non-stop which is a matter that will be brought before the Commission at a later time. He had been a card room employee of the other business and as a result they knew. Mr. Platis used is a key term "loophole" instead of being a victim of somebody who approached him with what seemed to be a legal scheme. The licensee didn't call the Commission and ask is this okay? No. He just accepted his former employee's assertion that it was okay and he believed this because it was going on in other businesses. Bowers tells him they've got 15 other operations going on and as a result, it's okay. Mr. Reinmuth stated that both he and staff recommend that the Commission's Order state that it is not acceptable for a licensee to hide behind a third party and say an agent told them "it's okay" and that absolves him of his responsibility as a licensee to adhere to the strict standards of conduct passed by this Commission. Even if what Mr. Bowers told him was somehow true and something he should be able to rely on, that's not something that as a public policy this Commission should adopt.

**Mr. Reinmuth's** second point addressed the term "loophole" indicating that there was a choice. At one end of the spectrum is the way it is supposed to be – a player-banked Blackjack system which is what this Commission says must happen unless you are under the Appendices. Then there is the house-banked at the other end, and in the middle, there is the Bowers' brainstorm. They said was it was not house-banked nor player-banked, but it's a loophole, so we're going to try it anyway. They did it, and they thought they were okay. They weren't, and they were caught undercover through a sustained special investigations unit investigation that took horrendous resources. After the undercover operations were conducted, there was an unfolding of what was really going on. There was not in any sense a victimization. It was a careful, deliberate choice and that's what the initial order says from the administrative law judge – there was aiding, there was abetting, there was an awareness from the partners in this corporation of what Mr. Bowers was doing. They trained the dealers in this establishment. They knew this was a lucrative potential loophole for Mr. Bowers and they condoned it. They are still responsible to ask some questions and refuse to participate in this. He could say he is aware, the record shows he went to training and is aware of what Washington Blackjack is all about and what it means to be a licensee, and then refuse to take that risk. It's not enough to say that they weren't aware, or to pick and choose which license they want – the punchboard and pull-tab. Mr. Reinmuth reminded the Commissioners this is not what the Commission has done in the past, nor is it what the Legislature and the people of the state of Washington want from licensees. The Director decided to take away all of the licenses from the licensee because the overall integrity, honesty, and character of the licensee did not measure up.

**Chairman Ludwig** pointed out that Mr. Bowers wasn't a stranger to Mr. Stephens because he was an employee of Mr. Stephens in the other business he owned. **Mr. Platis** clarified for the record that he was a former employee of Mr. Stephens. Mr. Reinmuth mentioned training and he said Bowers had trained people for approximately two days. He also pointed out that the so-called "Bowers' brainstorm" came about due to the inadequacies in the gaming regulations themselves that allowed him to take advantage of Mr. Stephens. Mr. Platis noted that people often are taken advantage by the people closest to them rather than by people who are complete strangers. He said this establishment has suffered substantially. Mr. Stephens has a clean record and credibility, and made one mistake by relying upon somebody else who took advantage of him because of a loophole in the law which has since been rectified. Mr. Platis said Mr. Stephens should not lose his business as a result of all this. He should at least have his punchboards and pull tabs, which Mr. Platis thinks is a fair resolution of this matter. Mr. Stephens has been without any licenses for nine months. He's suffered irreparable damage up to this point and the public is clearly protected – his activities were not a willful disregard for the public at large.

**Chair Ludwig** called attention to the time and discussed the possibility of recessing to make a decision on the first two cases. **Commissioner Herbold** suggested they proceed with the third matter without recessing so the matter would not have to be continued to the January meeting. Chair Ludwig, after further consultation with the commissioners announced there would be a five to seven minute recess. Chair Ludwig recalled the meeting to order at 2:15 p.m.

**Chair Ludwig** informed the audience that the commissioners had left a matter off of the morning's docket involving a Default Order on Revoking of Card Room Employees License of Sherry Stanger. He noted that one commissioner did not want to take action until the arguments in reference to The Spot Tavern had been heard. That being accomplished, he said the commissioners were prepared to go ahead and act.

**Commissioner Herbold** moved to affirm the Default against Ms. Stanger. The motion was seconded by **Commissioner McLaughlin**. *Vote take; motion carried with three aye votes.*

### **Appeal – Revocation of Card Room and Punchboard & Pull-Tab Licenses**

#### **J. T. Enterprises /Groovy's, Everett:**

**Chairman Ludwig** called on Mr. Platis to proceed.

**Mr. Platis**, representing J. T. Enterprises, introduced James Breen. Mr. Platis noted this company is a restaurant, which at one time had 16 employees. It now has five. Mr. Breen was under the impression that he could put a list out for players who wanted to be bankers, and they would have to come with the amount of money -- \$2,000 or whatever. He did that believing that was adequate, believing it was a correct policy, and trying to regulate his business and trying to make it a more productive business, while allowing the players to understand what day of the week they would bank the operation so they would have their money available, and so he could have some control over his business. That essentially was the violation in his particular case.

**Mr. Platis** said that as submitted in the petition, he believed this conduct was not willful disregard for anything. When one weighs his conduct versus the public detriment or harm, he believed the balancing situation is such that Mr. Breen's belief that he was operating correctly and doing what everyone else was doing was such that it may be negligent for him not to check out the regulations or to check with the Gaming Commission. However, Mr. Breen believed that was the way things were going because of this Bowers situation, even though Mr. Bowers was not a part of his operation. His case is not a Bowers case. Mr. Breen just knew they were having banks at \$2,000, so he figured that all the players who wanted to bank could do it, and he wanted to regulate it by having them sign up as bankers on Wednesday, Thursday, Friday, and Saturday. This is what he was doing, and that's essentially his violation.

**Mr. Platis** noted that the revocation of all of his licenses is disproportionate to the alleged harm that was created by him to the public. They are asking this Commission to look at the circumstances of the fact that he's lost his licenses for nine months, and asking the Commission to reverse the revocation regarding his punchboard pull-tab licenses. They feel this is a fair and reasonable resolution of the matter. Mr. Breen has suffered and been punished enough and he has no other violations of any nature. Mr. Platis advised that the agents went after Mr. Breen, and filed a lot of different violations against him. Most of the violations were not found against him, specifically he was not involved in house banking and he was not receiving any income as a result of the way he was doing the one-banker-per-day policy.

**Chair Ludwig** said he was trying to avoid reading between the lines as Mr. Platis had asked them to do. He noted the record and the findings quote Mr. Breen as saying "It's \$3,000 cash to be a banker and to get on the list" but then he added, "and you could also lose more than that." Chair Ludwig said he could not imagine how one could lose more than that in a player-banked game. Chair Ludwig indicated that for Mr. Breen to say that, sounded like he was discouraging players from being a banker. He asked Mr. Platis if he had misread that in the ALJ's findings. Mr. Platis clarified that the players were being told they could lose more than the amount of the bank. Chair Ludwig couldn't imagine how a player could, unless it was a house-banked game. Mr. Platis explained that the person who was going to be the

banker had to put up a minimum amount. He was also allowed to go up to whatever extent he wanted. The banker was there for the whole day, so whatever he decided to lose was actually a decision that was placed upon him as to how much he wanted to risk as a banker. Chair Ludwig noted to the contrary, according to the findings, the banker was not there for the whole day. The banker couldn't even be found on one agent's visit.

**Mr. Reinmuth** affirmed that the Findings of Fact are based on stipulations by the licensee. The facts supporting the charges were completely true and with some additions in testimony. He reminded the Commission that the facts are not disputed. What is disputed is the penalty. Mr. Reinmuth did not take time to list every single violation of Washington Blackjack. The Commission has seen it and they know what happened. He noted that Chair Ludwig picked up on the fact that it was, in fact, a \$3,000 minimum, and noted it's interesting that it's the same minimum as the Bowers' operation.

**Mr. Reinmuth** said he also wanted to correct what he knows is not an intentional misrepresentation. There were other violations with respect to this particular licensee that involved a number of card tables that were running. Mr. Breen's license was for one card room and one table. There were situations, after the undercover visit, where more than one, two, and in fact three tables were admitted to be in operation and in play without a license. Mr. Reinmuth wanted the Commissioners to remember this as they assess the penalty in this particular case.

**Commissioner McLaughlin** asked if Groovy's was part of the sweep that Mr. Bowers was involved in throughout Snohomish County. **Mr. Reinmuth** reported the complaint was received well prior. There was an anonymous complaint that was separate from the Bowers' complaint. It was being processed at about the same time as the Bowers' case. Commissioner McLaughlin asked if that was why the nine months was the same, and acknowledged an affirmative answer. Mr. Reinmuth said this was not one of the Bowers' operations. He agreed with Mr. Platis about that. Some evidence clearly overlaps between the two in terms of the similarity and the minimum play and those kinds of things. Mr. Reinmuth said that in terms of the penalty that should be assessed in this situation, there were multiple violations. The record shows there was clearly an awareness of Washington Blackjack rules. There was training and the licensee was doing it right for awhile, but the records shows his customers didn't like it – he didn't like it – it was an impediment – it was upsetting his customers, so he just chose to do it differently. That choice is something other than the victimization that's being portrayed. It's the choice that carried a risk of losing a license in the state of Washington, when one does something that's not been approved by the Commission.

**Mr. Platis** countered that the choice Mr. Breen made was based on primarily what everyone else was doing in the community. There were 11 or 12 people who believed that they could have a bank for a minimum or maximum amount of whatever, and his client was just following the lead, even though he was not a Bowers' operation. Mr. Bowers was not in there operating it himself. That was the framework of what was going on which led to all these undercover investigations and the summary suspensions of all the various licensed establishments. About 10 of the establishments received five-year suspensions or monetary fines; however, his two clients have been revoked permanently. Mr. Platis believed that was unfair to The Spot Tavern and Groovys, with respect to the penalty phases.

**Chairman Ludwig** asked if any of the bankers were identified. **Mr. Reinmuth** said they were not. **Mr. Platis** said the record reflects that the agent went in and didn't see a banker there, and that he did ask on one occasion and the banker was at the bar. The next day, he said he came in and didn't find the banker, but Mr. Platis didn't think he asked or followed through. Mr. Reinmuth said the record is clear about what happened. The agent walked around and asked to have the banker pointed out, and there was nobody there. It is not incumbent upon the agent to do above and beyond. The person should be there, the person is supposed to have a marker in front of them - Mr. Platis is aware of the Washington Blackjack rules – none of those were present.

**Chair Ludwig** closed the review hearing and advised the parties they would be informed of the Commissioner's decision after they conferred by telephone. The decision would be for both cases at the

same time because they are so similar, and the relief requested is identical. Chair Ludwig said the Commission would be prepared to make a ruling in reference to Doran's Dead Game Service after a short inquiry. The meeting was recessed for ten minutes.

**Chair Ludwig** called for Mr. Zimmar and his client to come forward. Chair Ludwig stated the Commission agreed that nine and a half years of good behavior and a good effort on Ms. Doran's part ought to be enough for rehabilitation. However, there is a concern among the Commissioners about the outstanding restitution. Chair Ludwig said he was disappointed to hear it draws interest because Ms. Doran would find it difficult to make full restitution. The Commissioners asked if they determined that Doran's Dead Game Service should keep its license conditioned upon making certain restitution payments other than what's being paid now, would that be a burden for staff to monitor? **Ms. Patjens** said that if the Commission decides to assess a fine and gives the individual a certain amount of time to pay it back, staff could monitor this. There are other cases that staff routinely monitors. Chair Ludwig advised that Ms. Doran could send the Commission a copy of the payment or the receipt every month. Ms. Patjens said that would be fine.

**Commissioner McLaughlin** asked if Superior Court had given any direction on the amount of time Ms. Doran would have to make the \$200 payment. **Mr. Zimmar** said he would have to spend an hour of research time to find an answer. Seemingly, there might have been a 10-year rule to collect restitution on a crime, and if that's true, it will run out in about five or six months. Chair Ludwig said the Court loses jurisdiction after the 10 year probation is up, absent any other agreement.

**Mr. Zimmar** said probation probably ceased supervisory probation in 1992, and his client is no longer supervised. She has continued to make the \$200 payments. Mr. Zimmar said he knows the restitution department asks for financial declaration updates to see how people are doing, and to see if people could pay more money. This might be a situation they can continue, but if the Commission might be ruling in their favor, he said they are more than willing to bend over backwards to continue their payments for a certain period of time. Payments could be processed through his office, and he would send them to the Gambling Commission if desired.

**Chairman Ludwig** affirmed and noted the Commission's feeling that \$200 per month was not enough. He indicated his desire to enter an order that grants the petition, and Doran's Dead Game Service could continue to maintain their license conditioned upon Mrs. Doran making restitution in a monthly amount agreed to between the licensee and the staff. The Commission would later review the agreement. It was agreed the Executive Director, or his designee, would be the staff person in charge. **Mr. Zimmar** suggested an alternative might be that they designate a period of time for the amount to be paid off and then allow Ms. Doran to decide how to do that. Chair Ludwig affirmed the Commissioners had discussed that and were concerned that it would be possible for Ms. Doran to manipulate the repayment of the debt so she ended up not paying it at all until the very last month, and then the Commission would not have protected the restitution.

It was decided to leave the particulars of the payment time and amount up to the Executive Director or his designee, and Mr. Zimmar. The point **Chair Ludwig** stressed was that the Commission wanted to make sure Ms. Doran does her absolute maximum best to continue repayment, if the Commission is going to believe that she's been otherwise rehabilitated. **Mr. Zimmar** asked if the Commission would be receptive to an amount per month or an established time, and if it would make a difference if they found out that the employer had been paid in full. Chair Ludwig said that the Commission would have to unanimously consent to any difference and that in this case it would not make any difference – Ms. Doran must pay the entire amount regardless.

**Mr. Ackerman**, Assistant Attorney General, asked if the restitution was being paid into the registry of the court at this point. He was informed that it was being paid to the King County Clerk's Office. Mr. Ackerman advised the Commission would need some information from counsel to prepare the order, and because the insurance company may have paid off the employer, the money may need to be paid to the insurance company and it may ultimately be necessary for counsel to present an order to the judge that

did the sentencing to deal with the restitution. Mr. Ackerman anticipated that the 10-year jurisdictional period will expire and he didn't know what the status with the clerk's office would be at that point. He questioned whether they could continue to receive the money, or if the money needed to go directly to the insurance company. He emphasized there where a lot of details that needed to be taken care if the payments were required to continue to flow past ten years. **Mr. Zimmar** concurred, that was his question – would his client be required to continue paying even though legally she would not be required to. **Chair Ludwig** said he didn't think there would be any impediment on the part of the Court. Whoever is entitled to the money, whether it is the victim or somebody that's paid the loss, that is the situation that exists. Mr. Ackerman questioned whether in six months, if the law says Ms. Duran doesn't have to pay any more, will she be required to continue to pay the debt under the terms the Commission might establish as a condition to continue to be a licensee.

**Commissioner McLaughlin** asked why the payments must go through Mr. Zimmar. She felt that would just be one more cost of Doran's Dead Game Service - to have the check go through her attorney to forward to the Commission. She asked why it couldn't go directly to whomever. **Commissioner Herbold** thought that was what Mr. Ackerman was saying – that it could go directly to the insurance company or whoever has the subrogation rights. **Mr. Zimmar** noted that he would not charge his client to forward the checks and thanked the Commission for their decision.

**ADJOURNMENT:**

With no further business, a motion for adjournment prevailed at 3:10 p.m.

*Minutes submitted to the Commission for approval.*

*Shirley A. Corbett,  
Executive Assistant*